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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,943	08/22/2001	Thomas W. Obrock	I-15090	8876

1678 7590 12/18/2002

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EXAMINER

ANDERSON, GERALD A

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 12/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/934,943

Applicant(s)

OBROCK ET AL.

Examiner

JERRY A ANDERSON

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-100 is/are pending in the application.
- 4a) Of the above claim(s) 2-5, 19-21 and ²⁷~~23~~-100 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1, 6-18 and 22-26 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3, 8 6) ☐ Other: ____

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DETAILED ACTION

Election/Restrictions

Applicant's election with traverse and without argument of Figure 2 and 3 in Paper No. 11 is acknowledged. Claims 2-5, 19-21, 27-100 have been withdrawn from consideration because the applicant has not included these claims in the group readable on the elected species.

Information Disclosure Statement

The information disclosure statement complies with 37 CFR 1.98(a)(1), listing of all patents, publications, or other information submitted. However, the date provided should be at least the month and year of publication in the form MM/YYYY. The day of the publication can be omitted.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 6-18 and ²²2-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The language of the claims must clearly distinguish the elements of the claims. Plain terms have plain meaning. Therefore the "planar surface" should not have an "upturned portion". Terms in the claims which lack proper antecedent basis include: "the plate" in claim 8 and 9, "said front edge" and

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"said rear edge" in claim 10. Claim 8 is also redundant since a portion has been defined in claim 1 which is a barrier.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, as presented, are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ferdinand et al. Ferdinand shows a planar shelf 142 with an upturned edge portion 178 and 194 and end caps 24.

Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.

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3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 6-18 and 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kane et al ('338) in view of Thomas. Kane is cited showing a glass plate shelf 1002 with end caps 1040, 1044, 1042, and 1046. Kane fails to show a shelf with an upwardly turned portion of a defined width and degree. Generally the shape of an element is considered an obvious matter of design choice in view of the ordinary skill of one versed in the art. However in this case Thomas is being cited showing it is well known for a shelf to have an upturned portion adjacent the edges, see Figure 2. the degree and width of the upturned portion are considered an obvious matter of design choice in view of the teaching by Thomas that it is known in the art to provide an upturned edge. The selection of a well-known material, siloxane-type polymer, based on its suitability for the intended use is also considered an obvious matter of design choice in view of the ordinary skill of one versed in the art. Since the references are from the same field of endeavor the purpose of Thomas would have been obvious in the pertinent art of Kane at the time of the invention it would have been obvious for one having an ordinary skill in the art to have modified Kane with a in view of Thomas and with end caps of a siloxane-type polymer in view of the ordinary skill of one versed in the art, and the degree and width of the upturned portion being an obvious matter of experimentation to find the most desirable shape for one having an ordinary skill in he art.

Allowable Subject Matter

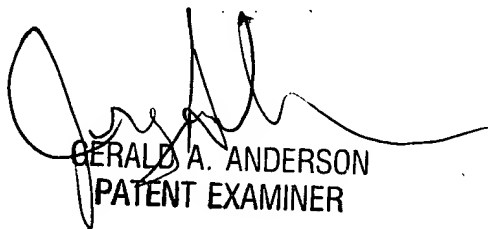
It is the Examiner's opinion at this time that a claim may be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all the limitations of the base claim and properly defining the two edges that are upturned and the other two edges that are capped.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry Anderson whose telephone number is 703 038 2202. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703 308 24668. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305 3597 for regular communications and 703 306 4195 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 2197.

Jaa
December 15, 2002


GERALD A. ANDERSON
PATENT EXAMINER